REMARKS

In response to the above-identified Final Office Action, Applicant seeks reconsideration in view of the following remarks. In this Response, Applicant does not amend, cancel, or add any new claims. Accordingly, claims 1-23 remain pending in the Application.

I. Claims Rejected Under 35 U.S.C. § 102

Claims 1-23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,146,572 B2 issued to Richardson ("*Richardson*"). Applicant respectfully traverses the rejection.

To anticipate a claim, the cited reference must disclose **each and every element** of the rejected claim (*see* MPEP § 2131). Claim 1 defines a data-empowered test program architecture stored on a computer readable storage medium, comprising:

> a plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence;
> a test executive software module configured to select a test sequence to use based on a unit-under-test;
> a test framework software module configured to receive a selected test sequence from the test executive software module, determine how to perform the selected test sequence, and perform the selected test sequence; and
> a plurality of software components in a software components module coupled for interaction with the test framework software module and structured for outputting at least one test report.

Applicant submits that:

A)   The Patent Office has failed to establish a *prima facie* case of anticipation under 35 U.S.C. § 102; and

B)   *Richardson* fails to disclose each and every element of claim 1.

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A.   **The Patent Office Has Failed to Establish a *Prima Facie* Case of Anticipation**

1.   The "plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence" elements

In making the rejection, the Patent Office alleges that the definition of a test module and a sequence file teaches or suggests "a computer readable storage medium, comprising a plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence," as recited in claim 1. Specifically, the Patent Office states, "Test module and Sequence File-A file that contains the definition of one or more sequences" (Paper No./Mail Date 20071126, page 3). Applicant submits that the Patent Office is reading claim 1 out of context by alleging that the definition of a test module and a sequence file is the same as "a computer readable storage medium, comprising a plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence," as defined in claim 1.

Claim 1 recites "a computer readable storage medium comprising a plurality of control files." While the Patent Office provides the definition of a test module and a sequence file, such definition only discloses what a test module and a sequence file are, this definition does not disclose more than one control file stored on a computer readable storage medium because the definition only describes what constitutes a test module and a sequence file. Therefore, Applicant submits that the Patent Office has not established a *prima facie* case of anticipation because the Patent Office has not provided a reference that discloses "a plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence," as recited in claim 1.

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>   2.   The "test executive software module configured to select a test sequence to
>   use based on a unit-under-test" elements

In rejecting claim 1, the Patent Office alleges that excerpts from columns 6 and 10 of *Richardson* disclose various elements of claim 1. Specifically, the Patent Office alleges that the excerpt "determine whether to execute a step" from column 10, lines 2-50 of *Richardson* and the excerpt "executive sequence may be operable to perform one or more test of the unit-under-test" from column 6 of *Richardson* disclose "a test executive software module configured to select a test sequence to use based on a unit-under-test," as recited in claim 1 (Paper No./Mail Date 20071126, page 3). Applicant submits that determining whether to execute a step within a test sequence and a sequence that can operate one or more tests on a unit-under-test is not the same as a module that is capable of selecting a test sequence based on the unit-under-test because in the Patent Office's characterization of *Richardson* does not include at least 1) a module selecting a test sequence; and 2) the selection being based on the unit-under-test. Rather, the Patent Office's characterization shows 1) a decision whether to execute a step in a sequence; and 2) an executive sequence that is capable of performing one or more tests on a particular unit-under-test. Therefore, Applicant submits that the Patent Office has not established a *prima facie* case of anticipation because the Patent Office has not provided a reference that discloses at least "a test executive software module configured to select a test sequence to use based on a unit-under-test," as recited in claim 1.

>   3.   The "test framework software module configured to receive a selected test
>   sequence from the test executive software module, determine how to perform
>   the selected test sequence, and perform the selected test sequence" elements

In further rejecting claim 1, the Patent Office alleges that another excerpt from *Richardson* reads on various elements of claim 1. Specifically, the Patent Office alleges that "test executive software may be operable to receive user input to a GUI" as disclosed in column 6, lines 60-65 of *Richardson* discloses "a test framework software module configured to receive a selected test sequence from the test executive software module," as recited in claim 1 (Paper No./Mail Date

20071126, page 3, emphasis added to "user input"). As an initial matter, claim 1 recites that the selected test sequence is received from the test executive software module, whereas the Patent Office's characterization states that the test executive software may be operable to receive user input. At a minimum, receiving user input and receiving a selected test sequence from the test executive software module are different because the sending entity is different (i.e., a user verses a test executive software module). Moreover, claim 1 recites that a test framework software module is configured to receive the selected test sequence from the test executive software module, whereas the Patent Office's characterization of *Richardson* clearly recites that it is the test executive software that receives user input.

In addition, the Patent Office's rejection fails to point out where in *Richardson* the elements of a test framework software module configured to "determine how to perform the selected test sequence, and perform the selected test sequence," as additionally recited in claim 1. Therefore, Applicant submits that the Patent Office has not established a *prima facie* case of anticipation because the Patent Office has not provided a reference that discloses at least "a test framework software module configured to receive a selected test sequence from the test executive software module, determine how to perform the selected test sequence, and perform the selected test sequence," as recited in claim 1.

        4.   The "plurality of software components in a software components module coupled for interaction with the test framework software module and structured for outputting at least one test report" elements

When rejecting claim 1, the Patent Office alleges that excerpts in Richardson disclose various elements recited in claim 1. Specifically, the Patent Office alleges that "test modules to test units-under-test (UUTs)" and "the test modules may interact with one or more hardware instruments to test the UUT(s)" disclosed on col. 1, lines 15-25 of Richardson, and "test executive sequence for unit-under-test" disclosed in column 8, lines 40-50 of *Richardson* discloses the elements of, "a plurality of software components in a software components module coupled for interaction with the

test framework software module and structured for outputting at least one test report," as recited in claim 1. Here, there is no mention in the Patent Office's characterization of *Richardson* of a test report because the Patent Office only characterizes *Richardson* as disclosing interaction between hardware instruments. One skilled in the art knows that hardware instruments may interact in various ways without ever outputting a test report. Moreover, just because hardware instruments interact does not necessarily indicate that a test report is generated. In fact, Applicant submits that the vast majority of hardware interactions do not result in a test report being output. Therefore, Applicant submits that the Patent Office has not established a *prima facie* case of anticipation because the Patent Office has not provided a reference that discloses at least "a plurality of software components in a software components module coupled for interaction with the test framework software module and structured for outputting at least one test report," as recited in claim 1.

B.   *Richardson* **Fails to Disclose Each and Every Element**

        1.   The "plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence" elements

        Richardson discloses "a system and method for configuring database result logging for a test executive sequence using a graphical user interface (GUI)" (Col. 1, lines 10-12, emphasis added, parenthetical in original). Specifically, *Richardson* provides a computer system that includes a memory medium on which test executive software is stored (*see Richardson*, Col. 6, lines 50-52). *Richardson* further discloses that "the test executive software may allow a user to create or configure a test executive sequence, and/or control test executive sequence execution for various test applications, such as production and manufacturing test applications" (*Richardson*, Col. 6, lines 52-56). Here, Applicant submits that *Richardson* is clearly discloses only <u>one</u> test executive sequence and/or <u>one</u> control test executive sequence. In contrast, claim 1 recites a computer readable storage medium comprising "<u>a plurality of control files</u>, each control file defining <u>a test sequence</u> for one of a plurality of units-under-test and <u>instructions for executing the test sequence</u>" (emphasis added).

Therefore, because Richardson only discloses a memory medium on which a single test executive sequence is stored, Richardson fails to disclose at least "a plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence," as recited in claim 1.

2.   The "test executive software module configured to select a test sequence to use based on a unit-under-test" elements

As discussed above, the Patent Office alleges that the excerpt "determine whether to execute a step" from column 10, lines 2-50 of *Richardson* and the excerpt "executive sequence may be operable to perform one or more test of the unit-under-test" from column 6 of *Richardson* disclose "a test executive software module configured to select a test sequence to use based on a unit-under-test," as recited in claim 1 (Paper No./Mail Date 20071126, page 3). Applicant submits that determining whether to execute a step within a test sequence and a sequence that can operate one or more tests on a unit-under-test is different from a module that is capable of selecting a test sequence, and is certainly different from a module that is capable of making the selection based on the unit-under-test. That is, *Richardson* discloses: 1) software that makes a decision whether to execute a step in a sequence; and 2) an executive sequence that is capable of performing one or more tests on a particular unit-under-test, whereas claim 1 recites: 1) a module selecting a test sequence; and 2) a module making the selection based on the unit-under-test. Therefore, Applicant submits that *Richardson* fails to disclose at least "a test executive software module configured to select a test sequence to use based on a unit-under-test," as recited in claim 1.

> 3. The "test framework software module configured to receive a selected test
> sequence from the test executive software module, determine how to perform
> the selected test sequence, and perform the selected test sequence" elements

As discussed above, the Patent Office alleges that "test executive software may be operable to receive user input to a GUI" as disclosed in column 6, lines 60-65 of *Richardson* discloses "a test framework software module configured to receive a selected test sequence from the test executive software module," as recited in claim 1 (Paper No./Mail Date 20071126, page 3). Here, *Richardson* clearly states that the test executive software receives user input, not a selected test sequence from a test executive software module, as recited in claim 1. As stated above, receiving user input and receiving a selected test sequence from the test executive software module are not equivalent because: 1) the sending entity is different (i.e., a user verses a test executive software module); and 2) the receiving entity is different (i.e., claim 1 recites that the test framework software module is configured to receive the selected test sequence, whereas *Richardson* discloses that the test executive software receives user input.

In addition, because *Richardson* does not disclose a test framework software module that receives a selected test sequence, simple logic therefore precludes *Richardson* from disclosing a test framework software module configured to "determine how to perform the selected test sequence" and a test framework software module configured to "perform the selected test sequence," as additionally recited in claim 1. Therefore, Applicant submits that *Richardson* fails to disclose at least "a test framework software module configured to receive a selected test sequence from the test executive software module, determine how to perform the selected test sequence, and perform the selected test sequence," as recited in claim 1.

      4.   The "plurality of software components in a software components module coupled for interaction with the test framework software module and structured for outputting at least one test report" elements

As discussed above, the Patent Office alleges that "test modules to test units-under-test (UUTs)" and "the test modules may interact with one or more hardware instruments to test the UUT(s)" disclosed on col. 1, lines 15-25 of Richardson, and "test executive sequence for unit-under-test" disclosed in column 8, lines 40-50 of *Richardson* discloses the elements of, "a plurality of software components in a software components module coupled for interaction with the test framework software module and structured for outputting at least one test report," as recited in claim 1. Here, there is no mention in the Patent Office's characterization of *Richardson* of a test report. At best, *Richardson* discloses that:

> various results of the execution of the test executive sequence may be collected by the test executive software. As described in detail below, the test executive software may be operable to receive user input to a graphical user interface (GUI) to specify desired database result logging criteria. The test executive software may then log at least a portion of the execution results for the test executive sequence to the database 101, according to the specified result logging criteria. (Col. 6, lines 59-62).

Applicant submits that *Richardson*'s results are collected and stored in a database, which collecting and storing are different than a outputting a report detailing test results. Therefore, Applicant submits that *Richardson* fails to disclose at least "a plurality of software components in a software components module coupled for interaction with the test framework software module and structured for outputting at least one test report," as recited in claim 1.

Applicant has shown in detail that the Patent Office has not established a *prima facie* case of anticipation and that Richardson does disclose each and every element of claim 1. Therefore, claim 1 is not anticipated by *Richardson*. Accordingly, Applicant respectfully request withdrawal of the rejection of claim 1.

Claims 2-5 depend from claim 1 and include all of the elements thereof. Therefore,

Applicant submits that claims 2-5 are not anticipated by *Richardson* at least for the same reasons as claim 1, in addition to their own respective features. Accordingly, Applicant respectfully request withdrawal of the rejection of claims 2-5.

Applicant submits that independent claims 6, 11, and 18 each recite elements similar to claim 1 discussed above. Therefore, Applicant submits that claims 6, 11, and 18 are not anticipated by *Richardson* at least for the same reasons as claim 1, in addition to their own respective features. Accordingly, Applicant respectfully request withdrawal of the rejection of independent claims 6, 11, and 18.

Claims 7-10, 12-17, and 19-23 depend from claims 6, 11, and 18, respectively, and include all of the elements thereof. Therefore, Applicant submits that claims 7-10, 12-17, and 19-23 are not anticipated by *Richardson* at least for the same reasons as their respective independent claims, in addition to their own respective features. Accordingly, Applicant respectfully request withdrawal of the rejection of claims 7-10, 12-17, and 19-23.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending are in condition for allowance. A Notice of Allowance is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (480) 385-5060 or jgraff@ifllaw.com.

If necessary, the Commissioner is hereby authorized to charge payment or credit any overpayment to Deposit Account No. 50-2091 for any fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

Date: January 22, 2008   /JASON R. GRAFF, REG. NO. 54134/
                                                                      Jason R. Graff

Ingrassia Fisher & Lorenz, PC
7150 East Camelback Road, Suite 325
Scottsdale, Arizona 85251

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